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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Krishnan Chari, et al

CYAN FLUORESCENCE DYE FOR
COATED OPTICAL BEAD RANDOM
ARRAY DNA ANALYSIS

Serial No. 10/713,165

Filed 14 November 2003

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

Sir:

Group Art Unit: 1639

Examiner: Christopher M. Gross

I hereby certify that this correspondence is being deposited today with the United States Postal Service as first class mail in an envelope addressed to Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Christine Tolhurst
Christine Tolhurst

February 8, 2007
Date

DECLARATION UNDER 37 C.F.R. §132

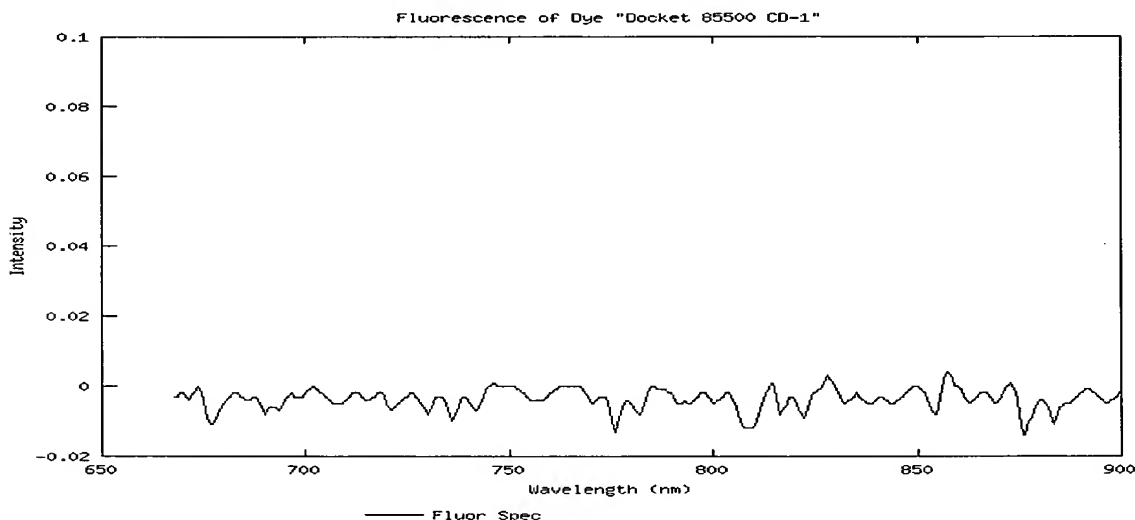
I, Donald R. Diehl, declare that:

1. I, Donald R. Diehl, am a resident of Rochester, in Monroe County in the State of New York. I am a citizen of the United States. I received a Bachelor of Science degree in chemistry in 1973 from Cleveland State University and a PhD in physical organic chemistry in 1978 from University of Wisconsin. I have been employed by the Eastman Kodak Company since 1978 and engaged since that time in organic chemistry research. I am a named inventor or co-inventor on over 40 issued and pending United States Patents related to my research and development activities. For these reasons I consider myself an expert in the field of dye chemistry.
2. I am a co-inventor of the above-captioned patent application, and of the applied reference, U.S. Patent Application Publication US 2005/0106711 ("Chari et al."); and

3. I am familiar with the Office Action mailed 12 September 2006, and the references cited therein.
4. The above-referenced pending application is directed to a microarray comprising a substrate coated with a composition comprising a gelling agent or a precursor to a gelling agent and microspheres that contain dye. The microspheres do not substantially fluoresce when excited by visible light, and are immobilized on the substrate.
5. The following results are from an experiment evaluating the fluorescence of dye CD-1, as described in the above-referenced pending application and dyes B-1 and D-4, as described in US 5,055,379

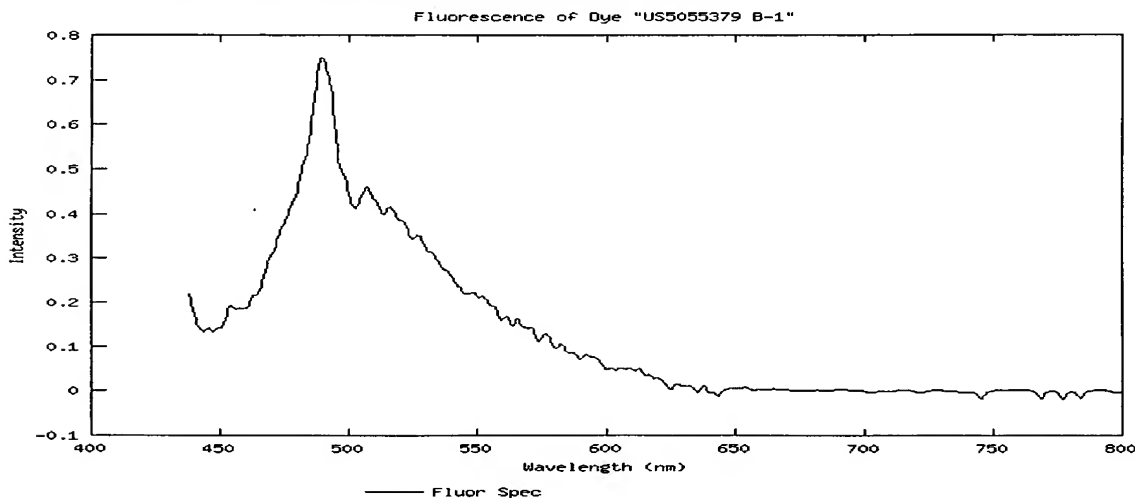
Dye "Docket 85500 CD-1"

Conclusion: no detectable fluorescence



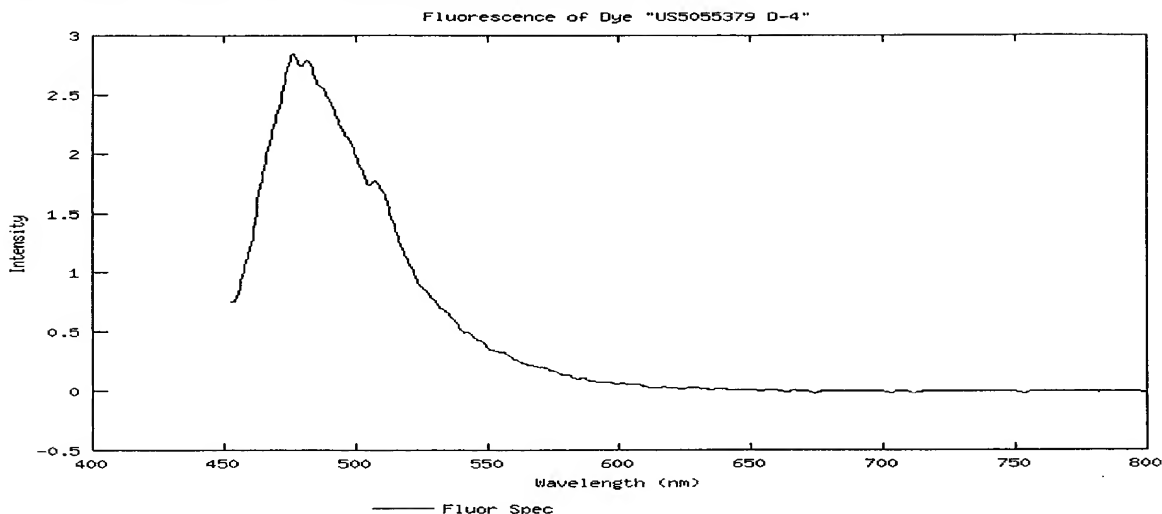
B. Dye "US5055379 B-1"

Conclusion: significant fluorescence, maximum 489nm



C. Dye "US5055379 D-4"

Conclusion: significant fluorescence, maximum 476nm



6. The fluorescence measurements show that one with ordinary skill in the art would not have been able to distinguish high fluorescence materials from low fluorescence materials based on the teachings of Bagchi et al. (US 5,055,379).
7. Further, since Bagchi et al. teaches that all the dyes described would be equally appropriate to use in the invention as described, it is clear that Bagchi et al. teaches one of ordinary skill in the art to choose dyes which would not enable the invention of the above-referenced pending application.
8. The undersigned declares further that all statements made herein of his own knowledge are true and all statements made on information and belief are believed to be true. These statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: February 8, 2007

Donald R. Diehl

Donald R. Diehl